



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

BRUCE E. BABBITT  
ATTORNEY GENERAL

McDougal  
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R76-254

June 30, 1976

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**ARIZONA ATTORNEY GENERAL**

Mr. Joe Samsill  
Assistant Director  
Administrative Services  
Livestock Sanitary Board  
1688 West Adams, Room 322  
Phoenix, Arizona 85007

Dear Mr. Samsill:

You have asked several questions with respect to the payment of overtime pay to employees of the Board and the overtime payments held in escrow by the Department of Administration. Specifically, you have inquired as to whether or not the facilities inspected by the Board which have made payments for overtime inspection services will receive the money held in escrow should the United States Supreme Court decide that the State of Arizona is not required to pay overtime under the federal Fair Labor Standards Act. You have also inquired as to the status of these proceedings.

As you know, under the principles announced in State v. Boykin, 109 Ariz. 289, 508 P.2d 1151 (1973), state agencies may not pay overtime to their employees absent express authority granted to them by the Legislature. Subsequent to that decision the Arizona Legislature enacted A.R.S. § 23-392 which authorizes the payment of overtime pay to "persons engaged in law enforcement activities." Livestock inspectors, however, do not qualify as persons engaged in law enforcement activities as that phrase is used in A.R.S. § 23-392.

For the purposes of this section, a 'person engaged in law enforcement activities' means a law enforcement officer as defined by § 38-1001, a peace officer as defined by § 41-1701, or any security personnel responsible for controlling or maintaining custody of inmates in correctional institutions maintained by a county, city or town. The term 'person engaged in law enforcement activities' shall not include any person employed in a bona fide executive



Mr. Joe Samsill  
June 30, 1976  
Page two

or administrative capacity as defined  
by the employer. Added Laws 1975,  
Ch. 51, § 1.

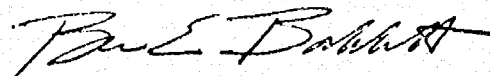
Moreover, we find no specific authority in the laws relating to the Livestock Sanitary Board which authorize the Board to pay overtime to its inspectors. Accordingly, the Board may grant to its employees who work overtime only compensatory time off at their regular salaries.

In addition, the case presently before the United States Supreme Court concerns the question of whether the Federal Fair Labor Standards Act applies to the State of Arizona and requires the state to pay overtime to its employees. Pending a decision from the Supreme Court, the various state agencies which have obtained overtime work from their employees have withdrawn money from the State Treasury for payment of overtime as required under the Federal Act, and that money has been placed in escrow to be distributed to the employees if the Supreme Court rules that overtime payments must be made by the State of Arizona. If, however, the Supreme Court rules that overtime payments are not required of the State under the Federal Act, the escrowed money will be returned to the State Treasury.

In any event, with respect to the meat inspection program, money collected for meat inspections likely will not be returned to the facilities which have made payments to the state for inspection services. These facilities were charged for overtime work under A.R.S. § 24-621.08 and have obtained the inspection services they paid for regardless of whether or not the money is ultimately paid to the inspectors or returned to the State Treasury.

If you have any further questions concerning this matter, please do not hesitate to contact us.

Sincerely,



BRUCE E. BABBITT  
Attorney General

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